

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3|5|2 CAPITAL GP LLC, on behalf of 3|5|2
CAPITAL ABS MASTER FUND LP and
LEUCADIA ASSET MANAGEMENT, LLC,

Case No. 1:24-cv-05102-VEC

Plaintiff,
-against-

RYAN WEAR, *et al.*,

Defendants.

**DECLARATION OF GREGORY A. BLUE ON BEHALF OF
REFRESHING MIDWEST LLC
IN RESPONSE TO ORDER TO SHOW CAUSE**

GREGORY A. BLUE declares as follows:

1. I am an attorney for Refreshing Midwest LLC and certain other defendants in this action. I respectfully submit this Declaration in response to this Court's Order to Show Cause (ECF No. 181) why a default judgment should not be entered against certain defendants, including Refreshing Midwest LLC. I have personal knowledge of the facts set forth herein.
2. A default judgment should not be entered against Refreshing Midwest LLC because Refreshing Midwest LLC appeared in and has been defending this action since before Plaintiffs filed their request for a default against Refreshing Midwest LLC.
3. On December 19, 2024, my colleague Kerry Ford Cunningham and I entered appearances on behalf of Refreshing Midwest LLC. (ECF Nos. 151, 152.)
4. Also on December 19, 2024, we filed a letter motion (ECF No. 153) requesting leave for Refreshing Midwest LLC to file a Motion to Dismiss joining in the Motion to Dismiss filed by the other parties represented by this firm. (ECF Nos. 128-130). Plaintiffs did not oppose that request.

5. The next day, December 20, 2024, the Court granted Refreshing Midwest LLC's application, and "note[d] that it construes Refreshing Midwest LLC's letter as a waiver of service of the Amended Complaint." (ECF No. 158.)

6. On December 23, 2024, Refreshing Midwest LLC filed a motion to dismiss the First Amended Complaint, joining in the previously-filed motion by this firm on behalf of the other defendants that we represent. (ECF No. 160.)

7. Although Refreshing Midwest LLC already appeared in the action, had been deemed by the Court to have accepted service, and filed a motion to dismiss, Plaintiffs purported to serve a copy of the Amended Complaint on Refreshing Midwest LLC on December 28, 2024. (*See* Affidavit of Service, ECF No. 166.)

8. On January 23, 2025, Plaintiffs filed a Memorandum of Law in Opposition to the Motions to Dismiss Filed by Defendants Jordan Chirico, Tyler Sadek and the Assigned Entities, and REVL Securities LLC and REVL Capital Management LLC. (ECF No. 176.) Plaintiffs' docket entry for the filing states that it is in opposition to Refreshing Midwest LLC's motion to dismiss at Dkt. No. 160. (*See* ECF No. 176.) Plaintiffs' memorandum referred to Refreshing Midwest LLC and its motion to dismiss at Dkt. No. 160. (*See* ECF No. 176 at p. 1, fn. 1.)

9. Nevertheless, on the same day that Plaintiffs opposed Refreshing Midwest LLC's motion to dismiss, Plaintiffs' counsel filed a Declaration in Support of Request for Certificate of Default (ECF No. 174) attesting that Refreshing Midwest LLC (defined as one of the "Initial Defaulting Entities", ECF No. 174 at ¶ 2) had "not answered or otherwise responded to the Amended Complaint, and the time for [it] to do so has not been further extended." (ECF No. 174 at ¶ 12.) Based upon Plaintiffs' counsel's declaration, the Clerk entered a Certificate of Default. (ECF No. 175.)

10. On January 24, 2025, the day after opposing Refreshing Midwest LLC’s motion to dismiss, Plaintiffs’ counsel submitted a Declaration in Support of Default Judgment (ECF No. 180) attesting that Refreshing Midwest LLC (defined as one of the “Defaulting Defendants”, *id.* at ¶ 2) had “not answered or otherwise responded to the Amended Complaint, and the time for [it] to do so has not been further extended.” (*Id.* at ¶ 13.)

11. On January 28, 2025, the Court entered an Order to Show Cause directing the “Defaulting Defendants,” which includes Refreshing Midwest LLC, to show cause why a default judgment should not be issued pursuant to Federal Rule of Civil Procedure 55 against each of them. (ECF Doc. No. 181.)

12. As shown by the Court’s docket, Refreshing Midwest LLC is not in default. Indeed, Refreshing Midwest LLC has not been in default at any time. *See* ECF No. 90 (extending time for all defendants to answer to November 18, 2024); ECF No. 96 (extending time for any motions to dismiss to December 11, 2024), ECF No. 105 (finding that, because of the filing of the Amended Complaint, “[n]one of the defendants is currently in default”); ECF No. 158 (granting Refreshing Midwest LLC leave to join prior motion); ECF No. 166 (proof of service upon Refreshing Midwest LLC dated after Refreshing Midwest LLC had appeared and filed motion to dismiss).

13. Accordingly, Refreshing Midwest LLC respectfully submits that Plaintiffs’ application for entry of an Order for Default Judgment Against Refreshing Midwest LLC should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 25, 2025, in White Plains, New York.

/s/ Gregory A. Blue
Gregory A. Blue